RCMP PUBLIC COMPLAINTS COMMISSION

FINAL REPORT

AFTER A PUBLIC HEARING

INTO THE
COMPLAINTS OF

DONALD J. ROBINSON, BEVERLEY M. FAREWELL,
T. FAREWELL, R. ROBINSON and N. ROBINSON

February 25, 1991

Dr. Richard Gosse, Q.C.
Chairman

RCMP PUBLIC COMPLAINTS COMMISSION

CHAIRMAN'S FINAL REPORT

RCMP Act: Part VII
Subsection 45.46(3)

Complainants:

Donald J. Robinson
Beverley M. Farewell
T. Farewell
R. Robinson and
N. Robinson

February, 1991

File Nos.: 2000-PCC-89168
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CHAIRMAN'S FINAL REPORT

I. INTRODUCTION

1. The Process

Part VII of the RCMP Act provides that any member of the public may make a complaint concerning the conduct, in the performance of any duty or function under the RCMP Act, of any member of the Force or any other person appointed or employed under the authority of the RCMP Act. The Force has the initial responsibility to investigate complaints and to respond to complainants. Where a complainant is not satisfied with the Force's disposition of a complaint, the complainant may refer the complaint to the Commission for review.

Where, after reviewing a complaint, the Chairman of the Commission is not satisfied with the disposition of the complaint by the Force or considers that further inquiry is warranted, the Commission Chairman may, among other things, institute a hearing to inquire into the complaint. In such a case, the Chairman of the Commission assigns the member or members of the Commission to conduct the hearing and gives a notice in writing of the decision to institute a hearing to the Solicitor General of Canada, the Commissioner of the RCMP, the member whose conduct is the subject-matter of the complaint and the complainant. The members assigned to conduct the hearing must include the member of the Commission appointed for the Province in which the conduct occurred.

Part VII of the RCMP Act requires that a hearing be held in public. At a public hearing the complainant, the member who is the subject of the complaint, and the Force itself through an officer known as the "appropriate officer" are, in person or by legal counsel, entitled to present evidence, to cross-examine witnesses, and to make representations. In addition, any other person who satisfies the Commission that they have a substantial and direct interest in the complaint is entitled to the same procedural rights. The hearing is an inquiry. It is not a civil or criminal trial.

On completion of a hearing, the members of the Commission conducting the hearing are required under the RCMP Act to prepare and send to the Solicitor General and the Commissioner of the RCMP a report in writing setting out such findings and recommendations with respect to the complaint as they see fit. These reports are characterized in the RCMP Act as "interim reports". The Commission has adopted a practice, in the case of public hearings, to make these interim reports available to both the parties to the hearing and the public.

The Commissioner of the RCMP is required to review the complaint in light of the findings and recommendations set out in the Interim Report. The Commissioner of the RCMP must then notify the Solicitor General and the Chairman of the Commission, in writing, of any further action that has been or will be taken with respect to the complaint. Where the Commissioner of the RCMP decides not to act on any findings or recommendations set out in the Interim Report, the Commissioner is required to include the reasons for this decision in the notice given to the Solicitor General and the Chairman of the Commission.

The notice received from the Commissioner of the RCMP is considered by the Chairman of the Commission. The Chairman of the Commission is required to prepare and send to the Solicitor General, the Commissioner and the parties to the hearing a final report in writing setting out such findings and recommendations with respect to the complaint as the Chairman of the Commission sees fit. The Commission is adopting the practice, in the case of public hearings, of making these final reports public.

2. Background to the Final Report

The formal written complaint of Donald J. Robinson in this matter was made to the RCMP on October 26, 1988. The formal written complaint of Beverley M. Farewell was made on October 3, 1988. A further written complaint dated October 7, 1988 was made by T. Farewell, R. Robinson and N. Robinson. The October 7, 1988 complaint was also signed by Beverley M. Farewell. Donald Robinson and Beverley Farewell referred their complaints to the Commission for review.

By Notice of Decision to Institute a Hearing and Assignment of Hearing Members dated December 8, 1989, I instituted a hearing into the complaints of Donald J. Robinson and Beverley M. Farewell. The notice assigned Allan Williams, Q.C., Ms. Rosemary Trehearne, and John U. Bayly, Q.C. as members of the Commission to conduct the hearing. Mr. Williams is the member of the Commission appointed for the Province of British Columbia. R. Robinson, T. Farewell, and N. Robinson were accepted as complainants for the purposes of the hearing.

The hearing convened and was held in public at Gibsons, British Columbia on March 12, 13 and 14, 1990. The hearing continued in Vancouver, British Columbia on March 15 and 19, 1990.

The parties to the hearing were the complainants, four members of the Gibsons Detachment of the RCMP, and a jail guard. It has since been learned that the jail guard is neither a member of the RCMP nor a person appointed or employed under the authority of the RCMP Act. As a result, Part VII of the RCMP Act does not apply to the guard.

An interim report dated July 31, 1990, containing findings and recommendations, was submitted to the Solicitor General of Canada and the Commissioner of the RCMP. The Commissioner provided notice to the Solicitor General and the Chairman of the Commission of the action taken or to be taken on the interim findings and recommendations by letter to the Commission Chairman dated December 17, 1990.

The present report is the final report of the Chairman of the Commission contemplated by Part VII of the RCMP Act. It contains as Appendix I the Interim Report of the members

of the Commission who conducted the public hearing. It also sets out the text of the Commissioner's notice of December 17, 1990.

II. THE COMMISSIONER'S NOTICE

The Commissioner's notice is as follows:

> Findings 1 to 17 inclusive,
>
> These findings reflect a fair and accurate description of the sequence of events at the Gibsons Detachment on September 30, 1988, and moreover, the shortcomings of those members who were on duty. I share your findings in this respect. In my view, this is clearly a situation where members failed to adhere to Force policy, which is found to be adequate.
>
> Finding 18,
>
> Although I tend to agree with your finding, I will take this under advisement. The issue concerning the quality of the Force's investigation, is not directly related to the complaint itself. However, I will instruct the Director of Personnel to examine this issue to determine whether changes are warranted.
>
> Recommendation 1(a),
>
> I share your finding that the complaints of Mr. Donald Robinson and Mrs. Beverley Farewell were well-founded and a written acknowledgement will be sent to each of the complainants from the Commanding Officer "E" Division, apologizing for the conduct of our members. The C.O. will delegate a senior officer to deliver this acknowledgement and discuss with the complainants the actions taken to prevent recurrence of the events.
>
> Recommendation 1(b),
>
> I have sought legal advice on the issue of reimbursement of expenses incurred in the presentation of complaints and have been informed that it is not within my purview to do so. This matter is one which more properly falls within the mandate of Treasury Board, as was suggested in your 1989/90 Annual Report.
>
> Recommendation 2,
>
> The Force policy is clear and appropriate. Members are required to comply with statutory obligations, including the Offence Act of British Columbia for

those members stationed in that province. In regards to section 81(1)(b) of that Act, there is no requirement for the police officer to seek out an adult who appears to be capable of taking charge of such a person. It is understandable that no attempt was made by the arresting officer. I will, however, instruct the Director of Enforcement to examine our policy and determine whether it is appropriate.

Recommendations 3,4,6,7,8 and 9,

In light of the recommendations, the Force policy has been examined and I am satisfied that the policy is appropriate with respect to custodial care of prisoners. I will, however, instruct the Director of Training to examine recommendation 6 and determine whether members and civilian guards should receive additional instruction in recognizing the signs and symptoms which indicate the need for medical assessments of or assistance to prisoners.

Recommendation 5,

With respect to special care in circumstances where more than one prisoner is placed in the same cell, I will instruct the Director of Enforcement to re-examine our policy.

Recommendations 10 and 11,

I will take these recommendations under advisement. They do not directly relate to the complaint itself. To exclude the Detachment Commander from investigating a public complaint would involve amendment to the RCMP Act. I will instruct the Director of Personnel to examine the recommendations and, should amendments to the Act be pursued, your concerns will be addressed.

You may be assured the Force has been most concerned over the conduct of Cpl. B.L. Waite. Internal discipline has been imposed pursuant to Part IV of the RCMP Act.

In response to your request to be informed of the specific discipline imposed, the Director of RCMP Legal Services is examining this issue after receiving correspondence from your Counsel. I anticipate this matter will be addressed by our respective legal advisors in the near future.

In order to ensure that all matters which are addressed in this notice are given full and proper attention, I will personally monitor their ultimate resolution.

III. FINAL FINDINGS AND RECOMMENDATIONS

1. General Comment

This is the first case in which the Chairman of the Commission has been called upon to make a final report following a public hearing. The RCMP Act contains little guidance as to the contents of a final report. The Act requires only that the Chairman is to consider the Commissioner's notice and then prepare a final report "setting out such findings and recommendations with respect to the complaint as the Commission Chairman sees fit.". This is a broad power which potentially gives the Chairman the authority to make any findings and recommendations with respect to the complaint as in the Chairman's judgement are fit.

Another word for "fit" is "suitable". In considering what final findings or recommendations are fit or suitable I have had regard to the process which has brought these complaints to this final stage. Donald Robinson and Beverley Farewell were not satisfied with the Force's disposition of their complaints. After reviewing their complaints I was of the opinion that further inquiry was warranted. A public hearing was instituted for the purpose of conducting that further inquiry. The evidence concerning these complaints was brought out fully in that public hearing.

The hearing resulted in a comprehensive, well-considered, and carefully presented Interim Report. The factual findings contained in the Interim Report have been accepted by the Commissioner of the RCMP. It has not been necessary, therefore, for me to consider issues of fact. I have been able to address my mind to the suitability of the Commissioner's response to the findings and recommendations in the Interim Report.

2. Final Findings

Findings 1 to 17 of the Interim Report

The Commissioner has accepted that findings 1 to 17 of the Interim Report reflect a fair and accurate description of the events and the shortcomings of the members who were on duty. The Commissioner shares these findings and has stated that this is clearly a situation where members failed to adhere to Force policy. By accepting these findings the Commissioner has accepted that the Force's initial disposition of these complaints was less than satisfactory. Most significantly, the Force has now accepted that Corporal Waite assaulted Mr. Robinson twice by kicking his legs out from under him. I am pleased with the Commissioner's positive response to these essential findings of fact and I am now satisfied with this aspect of the disposition of the complaint.

The Commissioner's acceptance of the Commission's findings following a public hearing demonstrates the value of the public complaints process. Lying at the heart of the public

complaints process is the ability to bring to light that which would otherwise remain obscured from view. The public hearing process permits the entire story to be told and considered. If the Force's senior management had had a full appreciation of the facts as a result of its investigation of the complaints, the Force's disposition of the complaints would surely have been different.

This was the first public hearing conducted under Part VII of the RCMP Act. Public hearings into matters which have previously been immune from public scrutiny inevitably cause tension and upset. This hearing was no exception. Public hearings are, however, a necessary last resort in those cases where the Force has not adequately inquired into a complaint. The seriousness with which the Force deals with public complaints is reflected in the fact that only a handful of public hearings have been instituted out of the hundreds of complaints which have been referred to the Commission for review. The positive response of the Force to the carefully considered findings of the Commission is the Part VII process working at its best.

Finding 18 of the Interim Report: The Quality of the Force's Investigation

The Commissioner in his notice has taken the position that the issue concerning the quality of the Force's investigation is not directly related to the complaint itself. This is an observation with which I must disagree. The failure of the Force to adequately investigate complaints as serious as those in the present case is the chief reason leading to the initiation of a public hearing. Had the facts and the significance of the facts come to light through the Force's own investigation, the Force's disposition of the complaints should certainly have been different. Even had the Force's disposition of the complaints fallen short of the complainant's expectations, a proper investigation provides a basis for a review of the complaint without the emotional wear-and-tear and expense of a public hearing. The appropriateness of the Force's investigative response to complaints will always be part of the Commission's review of complaints.

In addition, the public must have confidence that any allegation of serious police misconduct has been thoroughly and fairly investigated by the Force itself. The Commission itself must be able to review complaints with confidence that all relevant facts are before the Commission. Past experience has shown instances where there is no merit to a complaint against a police officer but the investigation is flawed or has the appearance of a "cover-up". The result is that the complaint appears to the public to have more merit than it actually does and the credibility of the police force suffers. In such situations the flawed process becomes far more important than the original complaint. Scrutiny of the investigative process employed by the Force in disposing of a complaint is a necessary and inevitable aspect of the complaints review and hearing process. Where flaws in the investigative process are detected it is, in my judgement, entirely appropriate that they be pointed out. This provides assistance and guidance to the Force. It is also logical since it would be

senseless to require the making of a separate complaint under Part VII unless the flaws in the investigation were so serious as to amount to a disciplinary matter.

3. Final Recommendations

Recommendation 1(a) of the Interim Report: Apology

The Commissioner has accepted recommendation 1(a). I am, therefore, satisfied with this aspect of the disposition of the complaint.

Recommendation 1(b) of the Interim Report: Compensation

(i) Reasonable expenses

Recommendation 1(b) was that the Commissioner reimburse each of the complainants for those reasonable expenses necessarily incurred in the presentation of the complaints and compliance with the procedures set out in the Act. The Commissioner's notice advises that he has taken legal advice on the issue and has been informed that it is not within his purview to act on this recommendation. The Commissioner's notice indicates that this is a matter which more properly falls within the mandate of Treasury Board.

While I recognize that compensation of the type which was recommended goes beyond the reimbursement of expenses expressly contemplated by Part VII of the RCMP Act, I am under the impression that the Commissioner has misinterpreted the recommendation. Part VII of the RCMP Act expressly contemplates that the Commission has the discretion to award travel and living expenses to the complainant or the person who is the subject of the complaint or their counsel where the Commission sits at a place that is not the ordinary place of residence of those people. The amounts of such travel and living expenses are fixed by Treasury Board.

Recommendation 1(b) goes beyond Part VII of the RCMP Act. I interpret the recommendation as inviting the Commissioner to consider an ex gratia payment to the complainants for reasonable expenses which are not otherwise covered by Part VII because the Commission conducted the public hearing in Gibsons and then nearby in Vancouver. The Commissioner has some authority to make ex gratia payments under rules and within limits established by Treasury Board. To the extent that Treasury Board rules preclude payment or the limits established by Treasury Board are exceeded, then the Commissioner may request Treasury Board approval for such a payment. There is no legal impediment to the Commissioner making such a request. It would then be up to Treasury Board to determine if the payment is appropriate. The Commission anticipates that Treasury Board would give such a request, based on a recommendation of the Commission, serious consideration.

Therefore, I repeat recommendation 1(b) for the purposes of this final report and invite the Commissioner to reconsider this recommendation in light of the apparent misinterpretation of the intent of recommendation 1(b).

(ii) Compensation for injuries

The Interim Report did not discuss the question of whether it would be appropriate for the Commission, given its findings of fact, to consider recommending that the complainant Donald J. Robinson should receive any compensation from the RCMP in respect of the injuries he received while in custody.

In principle, there seems to be no reason why a recommendation for compensation for injuries, based on appropriate findings of fact, should not be made in certain cases. Should not a complainant whose complaint is found to be justified by the Commission not be entitled to expect the Commission to make a recommendation that he be compensated? Otherwise the complainant must bring separate civil proceedings to recover damages, with the additional costs, time delays and personal stress that would be involved.

In practice, however, the Commission should be cautious about its process being used as a substitute for civil damage suits. While there may be relatively straightforward occasions when a recommendation could be made, the facts would obviously have to support such a recommendation and the parties should have the opportunity to address the relevant issues.

In the present instance, there are somewhat complicated issues relating to the causes of the injuries, and the attribution of legal responsibility for those injuries (including possible questions of vicarious liability and negligence). The panel sitting as the Commission did not examine these issues in the Interim Report from a civil liability perspective, nor did the parties at the hearing present arguments relating to them. No doubt the panel considered that it was not a suitable forum for disposing of these issues.

A civil action has, indeed, been brought by Donald Robinson against several of the Force members involved.

I make no recommendation here, for the reasons referred to above.

Recommendation 2 of the Interim Report: Release of Intoxicated Persons

Recommendation 2 addresses the decisions made by members of the Force in applying subsection 81(1) of the Offence Act of British Columbia. This provision permits peace officers to take intoxicated people into custody in specified circumstances. The section also permits the release of an intoxicated person to an adult person who is willing and capable of taking charge of the person. The recommendation was that the Force ensure that its members recognize the responsibilities imposed by this legislation and keep a complete and

accurate record of the manner in which those responsibilities are fulfilled. In addition, it was recommended that members should determine whether or not there is an adult person who is willing and capable of taking charge of the person who is being taken into custody. An effort should be made to release the intoxicated person to that adult person rather than placing the intoxicated person in a cell.

The Commissioner expresses the view that Force policy is clear and appropriate in that members are required to comply with statutory obligations including those imposed by the Offence Act. This policy is expressed in terms of the duty of members to discharge their duties and responsibilities conscientiously and diligently; to enforce the law fairly, firmly, and rationally; and to use caution and prudence when exercising the power conferred on members by law. The Commissioner observes that there is no requirement under the Offence Act for a police officer to seek out an adult who appears to be capable of taking charge of such a person. The Commissioner states that it is understandable that no attempt was made by the arresting officer in this case. The Commissioner has, however, instructed the Director of Enforcement to examine the Force's policy and determine whether it is appropriate.

I do not know on what basis the Commissioner has determined that it was understandable that the arresting officer in the present case made no efforts to determine if there was an adult who was capable of taking charge of Donald Robinson. Perhaps the Commissioner is referring to the fact that it was a busy evening at the Detachment and a number of people were being placed in the cell under section 81(1)(b) of the Offence Act. Gibsons is, however, a small community and Mr. Robinson has family in the community. The Commission is aware that members do frequently exercise their discretion when picking up people to enquire if there is some place they can be taken other than the jail before taking the person into custody. This is a sensible exercise of discretion in that it gives meaning to the discretion to release conferred by section 81(1)(b) of the Offence Act. It is sensible as well where the consequence of taking a person into custody is to place them in cell facilities that are inappropriate for the numbers who are being lodged in cells. It is also a use of discretion which accords with the ideas of fairness and prudence found in the Force's Administration Manual.

It would have been more satisfactory if the Commissioner had more positively recognized that, although there may be no legal obligation to do so, it is a sensible exercise of discretion to determine if there is an alternative to placing a person in cells. I accept that matters of policy must be developed within the Force in a way which involves consultation and consideration. However, I would have thought that the Commissioner might have given the Director of Enforcement some guidance as to the desirability of incorporating a direction to members with respect to the discretion conferred by section 81(1)(b) of the Offence Act and the circumstances in which that discretion might be exercised.

Recommendations 3, 4, 6, 7, 8 and 9 of the Interim Report: Force Policy on Custodial Care

With respect to recommendations 3, 4, 6, 7, 8 and 9 the Commissioner indicates that he has examined the Force policy in light of the recommendations and is satisfied that the policy is appropriate with respect to custodial care of prisoners. The Commissioner has instructed the Director of Training to examine recommendation 6 and determine whether members and civilian guards should receive additional instruction in recognizing the signs and symptoms which indicate the need for medical assessment of or assistance to prisoners.

Recommendations 3, 4, 6, 7, 8 and 9 interrelate Force policy and the implementation of that policy. I do not take these recommendations as being critical of the policy. Indeed, the Interim Report at page 34 refers to the provisions of the policy as commendable. The relevant provisions of Force policy are attached as Appendix II. After considering these provisions I share the finding that they are commendable. However, I understand the recommendations to flow from the finding that Force policy was not applied in this case. I understand the recommendations to be framed with a view to improving the linkage between policy and consistent implementation. In this instance, there was a clear failure in the application of Force policy at the detachment level.

While the training contemplated in the Commissioner's response goes some distance to meeting these recommendations, the Commissioner's response as a whole has missed an opportunity to explain how the Force does ensure that its policies are followed in practice. The Commissioner is, of course, aware of the mechanisms in place within the Force which are designed to ensure that policies are in fact applied and he no doubt takes that knowledge as a given when preparing notices in cases such as this. The public, however, has little appreciation of the efforts made by the Force to ensure compliance with Force policy.

This is a case in which the member in charge on the evening in question failed to follow policy. This failure only came partially to the knowledge of the Force's management after persistent efforts by the complainants to have the matter investigated. It was only after a full public hearing that all the facts came to light.

Recommendation 5 of the Interim Report: More Than One Prisoner in Cell

Recommendation 5 deals with the approach to be taken where more than one prisoner is placed in the same cell. Some detachments only have one cell. The Commissioner has instructed the Director of Enforcement to re-examine the Force's approach to this issue. I would expect that the Commissioner would with this, as with other matters involving a re-examination of Force policy, advise the Commission of any changes made to policy.

Recommendations 10 and 11 of the Interim Report: RCMP Internal Investigations

Recommendations 10 and 11 deal with the importance of prompt and impartial investigation of complaints involving serious matters such as an alleged assault by a member of the Force. It has been recommended that no member of the Detachment be assigned to the investigation. The Commissioner's response observes that these recommendations do not relate directly to the complaints themselves and that the Commissioner will take the recommendations under advisement. The Commissioner observes that an amendment to the RCMP Act would be required to exclude the Detachment Commander from investigating a public complaint. The Commissioner advises that should amendments to the Act be pursued, the recommendations will be addressed.

I believe that the Commissioner has misinterpreted the RCMP Act. Section 45.38 authorizes the Commissioner to make rules governing procedures to be followed in investigating complaints under Part VII. Subsection 45.37(4) provides that a complaint shall be investigated in accordance with such rules. Clearly the manner in which the investigation of a public complaint is carried out is entirely within the control of the Commissioner by virtue of the Commissioner's rule-making authority. This special rule-making authority is set against the general authority of the Commissioner to control and manage the Force. It may also be noted that the organization of the Force into detachments and the various responsibilities of detachments are established by rule and by regulation and not by the Act itself.

The Commissioner has made rules under Part VII for the investigation of public complaints. Those rules require the Detachment Commander to conduct or cause to be conducted the investigation of a public complaint. In this respect the rules parallel Part IV of the RCMP Act which deals with discipline. Part IV requires Detachment Commanders or any officer in command of a member to conduct or cause to be conducted investigations of suspected contraventions of the Code of Conduct. There is, however, no requirement in the RCMP Act that investigations under Part VII follow the same path as investigations under Part IV. Indeed Part IV and Part VII create entirely different procedures for discipline, on the one hand, and public complaints, on the other. In any event, Part IV does not limit the authority to investigate alleged disciplinary infractions to Detachment Commanders. Any officer in command of a member may investigate the matter or cause it to be investigated. This gives the Force the ability to withdraw the investigation of serious disciplinary matters from the close confines of a detachment. A similar flexibility could easily be injected into the rules governing the investigation of public complaints under Part VII. The Commissioner's observation that recommendations 10 and 11 do not directly relate to the complaint itself is in the same vein as the Commissioner's observations concerning finding 18. My comments made with respect to finding 18 regarding the importance and interrelationship of a proper investigation to the satisfactory disposition of a public complaint are equally applicable here.

I would, therefore, repeat recommendations 10 and 11 for the purposes of this final report and would ask the Commissioner to reconsider his response to these recommendations.

Concluding Observations on the Commissioner's Notice

(i) The Discipline Imposed

The Commissioner has stated that the Force is most concerned over the conduct of Corporal B.L. Waite. I am pleased that the Commissioner has expressed that concern in his notice. The Commissioner's observation that internal discipline has been imposed on Corporal Waite pursuant to Part IV of the RCMP Act is, however, a reference to the discipline which had already been imposed on Corporal Waite prior to the public hearing.

The evidence at the public hearing indicated that Corporal Waite had been disciplined in respect of three matters, namely, the failure to note information concerning the injuries suffered by Donald Robinson on the form prescribed by the Force for that purpose, the failure to provide adequate protection for Donald Robinson from another prisoner in the cells, and the failure to record in the Prisoner Log Book the removal and subsequent return of Donald Robinson to the cells.

The findings in the Interim Report go beyond this. It is disappointing that the discipline in this case should have been based only on a partial appreciation of the facts. I am aware that there are difficulties in linking findings made in the Part VII process to discipline imposed under Part IV of the RCMP Act. However, the fact that disciplinary action has not been based on all of the facts as they are now known is far from satisfactory. No discipline has been imposed on Corporal Waite for the assaults on Donald Robinson.

To the extent that this is a result of the provisions of the RCMP Act which separate the public complaints process from the discipline process, the solution may lie in legislative amendment. These matters were touched upon in the Commission's First (at pp. 70-73) and Second (at pp. 80-83) Annual Reports.

ii) Discipline and the Privacy Act

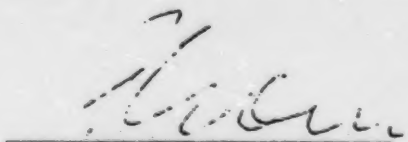
Consistent with the Force's policy, the Commissioner has not disclosed the discipline which has been imposed. It is the view of the Force that the Privacy Act precludes the disclosure of the discipline actually imposed on a member. This is a matter in which the Force and the Commission have different interpretations of the requirements of the RCMP Act in relation to the Privacy Act. It is the view of the Commission that Part VII requires the disclosure by the Commissioner of the action taken or to be taken by the Commissioner in response to a public complaint, with the result that disclosure of the discipline actually imposed is authorized by the RCMP Act and does not violate the Privacy Act.

This is clearly a case in which disclosure of the discipline actually imposed would serve the public interest. Disclosure of the actual measures taken would contribute substantially to public confidence in the Force. Neither the complainant nor the public can be expected to be satisfied with a general statement that disciplinary measures have been or will be taken. No police force, the RCMP included, can expect to have and maintain public confidence, in cases where the police have behaved improperly, unless there is disclosure of the actual disciplinary measures that are taken.

In view of the differing legal views on the application of the Privacy Act, there should be a legislative amendment to ensure that disclosure is made. Litigation is an alternate course of action, but legal proceedings involve considerable delay and expense, and could conclude with a result, based on the rules of statutory interpretation, that is unsatisfactory in principle. This issue has been referred to in the Commission's Annual Reports.

(iii) Follow-up

As noted in several instances, the Commissioner has referred issues to those in the Force responsible for personnel, enforcement, or training. The Commissioner has undertaken to personally monitor the ultimate resolution of the matters addressed in his notice. I would expect the Commissioner to advise the Commission of the ultimate resolution.



Chairman

February 25, 1991

Dr. Richard Gosse
Chairman
RCMP Public Complaints Commission
P.O. Box 3423, Station "D"
Ottawa, Ontario
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ROYAL CANADIAN MOUNTED POLICE

PUBLIC COMPLAINTS COMMISSION

Royal Canadian Mounted Police Act 1986

Part VII
Subsection 45.45(14)

Public Hearing
Into the Complaints
of
Donald J. Robinson
Beverley M. Farewell
T. Farewell
R. Robinson
N. Robinson

COMMISSION REPORT

Allan Williams, Q.C.
Rosemary Trehearne
John U. Bayly, Q.C.

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July 31, 1990

TO: THE HONOURABLE PIERRE CADIEUX, SOLICITOR GENERAL OF CANADA

TO: COMMISSIONER NORMAN INKSTER, ROYAL CANADIAN MOUNTED POLICE

The undersigned were appointed by Dr. Richard Gosse, Q.C., Chairman, Royal Canadian Mounted Police Public Complaints Commission, pursuant to the authority invested in him under Part VII of the Royal Canadian Mounted Police Act, to conduct a public hearing to enquire into the complaints of Donald J. Robinson and Beverley M. Farewell in respect of certain events which occurred while Donald J. Robinson was held in custody in the RCMP Detachment at Gibsons, British Columbia on September 30, 1988.

We have the honour to submit our report in accordance with subsection 45.45(14) of the Royal Canadian Mounted Police Act.

All of which is respectfully submitted,

Allan Williams, Q.C.

Rosemary Trehearne

John U. Bayly, Q.C.

1. HEARING PROCESS

By Notice of Decision to Institute a Hearing and Assignment of Hearing Members dated December 8, 1989, Doctor Richard Gosse, Q.C., instituted hearings into the complaint of Donald J. Robinson and the complaint of Beverley N. Farewell in accordance with the authority contained in Royal Canadian Mounted Police Act 1986.

In the Notice of Decision, Doctor Gosse identified, as parties, the following: Corporal Bruce Waite, Constable Mark Sorokan, Constable Pat Murphy, Constable Derek Crawford, Mr. Dave Marshall, of RCMP Detachment Gibsons, B.C.

The Notice given by Dr. Gosse assigned Allan Williams, Q.C., Ms. Rosemary Trehearne, and John U. Bayly, Q.C. as members of the Commission to conduct the hearings.

In the course of the preparations for the hearings, the Commission accepted as complainants Mr. R. Robinson, Mr. T. Farewell, and Mrs. N. Robinson, the father, step-father, and step-mother respectively of Donald J. Robinson.

The hearings convened and were held in public at Gibsons, B.C. on March 12, 13, and 14, 1990. The hearings continued in Vancouver, B.C. on March 15 and 19, 1990.

Throughout the hearing the Commission was assisted by the following counsel:

Counsel for the Commission - Donald J. Sorochan
Counsel for Corporal Bruce Waite - John E. Hall, Q.C.
Counsel for the RCMP member, other person, and the appropriate officer - Nancy Irving and Michael Duffy.

2. NARRATIVE OF EVENTS

On Thursday September 29, 1988 in Gibsons, British Columbia, the weekend had begun early. The taverns were busy. There was a floor show at the local cabaret. There were dozens of people on the streets. Before 2300 hours, three young offenders had been found drunk and lodged in RCMP cells.

Corporal Waite, a 22-year veteran of the RCMP, was the officer in charge. Constables Sorokan and Murphy had come on duty with him at 1700 hours that day and would ordinarily have completed their shifts at 0300 hours on Friday, September 30th. When the young offenders were arrested, part-time guard David Marshall, a civilian employee who was otherwise retired, had been called in to watch the prisoners.

At approximately 2300 hours on September 29th a person who will be referred to as D1 was, according to his own evidence, trying to walk up School Hill Road. He was arrested pursuant to the provisions of section 81 of the British Columbia Offence Act for being drunk in a public place and booked into the cells at the RCMP Detachment. The entry on his Prisoner Record (Form C-13) stated he was to be released when sober. On being lodged in the cell, he took a bunk and went to sleep. At the time of his arrest, he was uninjured.

The Young Offenders Act provides that young offenders are not to be lodged in the same cells as adults. As the Gibsons Detachment of the RCMP has only a single cell, D1's arrest necessitated the release of the young offenders into the custody of their parents. This cell, which is approximately 8' x 12', is equipped with two upper/lower bunk units and a toilet. The bunks, which are of metal, are without mattresses. The cell has three solid walls and a mesh and bar wall with a sliding barred door which separates it from the cell block area. A steel door provides access to the cell block area from the

Detachment offices. This door has an observation window with a shutter. The cell area is otherwise unremarkable.

On that same evening, Donald Robinson, one of the complainants, had gone to Elfie's Cabaret with two friends. Earlier in the day he had returned from the logging camp where he was employed.

At Elfie's Cabaret, Donald Robinson had a lot to drink. By his own account, he consumed about seven beers and four or five drinks of rye and coke. He claims that fatigue combined with the liquor caused him to fall asleep. He says he wanted to go home and sleep. Late in the evening he was asked by the management to leave the cabaret and was apparently escorted from the cabaret and thrown out. He may have kicked the door to try and get back in. He did manage to get back in later. When he was discovered lying asleep on his back on a table with his feet off the floor, the manager called the police, and Constables Sorokan and Murphy attended. They roused Mr. Robinson, who gave them no trouble, and arrested him for being intoxicated in licenced premises. He was taken to the RCMP Detachment where he walked unaided and without handcuffs into the booking-in room. He made a display of martial arts movements outside the Detachment but was asked to behave himself and did. During the booking-in process, according to Corporal Waite, Mr. Robinson made a smart remark to the Corporal which was interpreted by that officer as a threat. Corporal Waite had had no previous dealings with Mr. Robinson. They were strangers.

According to the Prisoner Record (Form C-13) Mr. Robinson was booked in at 0050 hours on September 30, 1988. A note was made on the form that he was to be issued a summons for refusing to leave a licenced drinking establishment and to be released when sober. The cell log, a chronological record of cell activity, indicates Mr. Robinson was lodged in the cell at 0108 hours. At the time he entered the cell he was

uninjured, and D1 was the only other prisoner. An entry in the log made by guard Marshall indicates that at 0123 hours, Mr. Robinson and D1 were asleep.

Meanwhile, back at Elfie's Cabaret, a person, D2, had been making rather a night of it. There, in the company of one N and others, he had been drinking since approximately 2100 or 2200 hours. In his own words, he was too drunk. He testified that he literally could not drink any more. He left the Cabaret on his own. He doesn't know when. He says he was going to call a taxi when the police picked him up. His arrest for being drunk in a public place and booking-in were uneventful. His Prisoner Record (Form C-13) shows he was booked in without charges at 0115 hours with instructions that he be released when sober. An entry in the prisoner log initialled by guard Marshall indicates he was lodged in cells at 0128 hours. Further entries by Marshall indicate that all three prisoners were asleep at 0141 hours and that they were also asleep when checked at 0155 and at 0209 hours. D2 was not heard from again until 0432 hours.

Sometime after 0200 hours, Constable Sorokan discovered one S in a drunken state behind the Bank of Montreal in Gibsons. He was arrested and driven to the Detachment where he was booked in at 0225 hours. According to his Prisoner Record (Form C-13), S was not charged and he was to be released when sober.

The cell log shows a note made by guard Marshall that S was lodged in cells at 0229 hours and that all the prisoners were asleep. At this time all four bunks in the cell were occupied.

About the time S was booked in cells, a domestic dispute at a house in Langdale, near Gibsons, was reported to the police. All three RCMP officers on duty responded to the call. As a result of this occurrence, N was arrested for being intoxicated in a public place, taken to the Gibsons Detachment, and booked in cells at about 0300

hours by Constable Murphy. Except for some superficial scalp cuts caused by broken glass in a fracas at the domestic dispute, N was uninjured.

When arrested, N was quite excited or hyperactive but his arrest and subsequent booking-in were of themselves uneventful. His Prisoner Record (Form C-13) notes instructions that he be released when sober. As is customary, his boots were taken from him prior to his being lodged in cells.

When the officers returned to the Detachment with N, the guard, Mr. Marshall, reported to Corporal Waite that there had been a fight between prisoners Robinson and D1. Entries in the log suggest that at 0235 hours Mr. Robinson was causing a nuisance to other prisoners, yelling and rattling the bars, and at 0243 hours Robinson assaulted D1. It must be noted that Corporal Waite and the other officers were absent from the Gibsons RCMP Detachment at the time. A further entry in the log by Mr. Marshall states that at 0246 hours Mr. Robinson was cooling down and that D1's face was cut.

D1 testified that he wears a partial dental plate and that the plate was damaged when he was struck in the face by Mr. Robinson. He could offer no reason for this incident but expressed considerable annoyance at receiving this kind of treatment while in the cell.

On receiving the report of the assault of D1 by Robinson, Corporal Waite entered the cell area and told Robinson to settle down. The log entry made by Mr. Marshall at 0254 hours indicates that Corporal Waite was accompanied by Constable Sorokan. The entry is corroborated by Constable Sorokan. Mr. Marshall admits, however, that he was not in the cell area at the time and wrote his entry from assumptions he made. Constable Sorokan overheard D1 tell Corporal Waite that he had been "sucker punched" by Mr. Robinson and that his plate had been damaged.

Constable Sorokan left the cell area and returned to the booking-in room to act as support to Constable Murphy in case any difficulty occurred during the booking of N. Constable Sorokan assisted N to place a telephone call to his father in Port Alberni, B. C. during this process.

When Constable Sorokan left the cell area, Corporal Waite stood at the closed steel access door to the cell area watching the prisoners through the observation window. He saw Mr. Robinson approach D1, doing what the Corporal described as Kung-Fu-like movements with his hands and feet. Thinking Mr. Robinson was going to strike D1, Corporal Waite "hollered" at him to stop. He then obtained the keys, unlocked the cell door, and removed Mr. Robinson. He took him out of the cell area through the booking-in room to the adjacent room referred to in evidence as the Interview Room. There is no log entry showing that Mr. Robinson was taken from the cell by Corporal Waite or at what time he was returned. Corporal Waite admits that he did not make an entry and takes full responsibility for this omission.

Corporal Waite's removal of prisoner Robinson did not go unobserved. Constable Sorokan saw Corporal Waite enter the cell area alone and saw him take Mr. Robinson through the booking-in area and on into the Interview Room. Constable Sorokan walked to the doorway separating the booking-in room from the Interview Room. From this position he observed Corporal Waite and Mr. Robinson standing face to face in the Interview Room. Corporal Waite was talking to Mr. Robinson in what Constable Sorokan described as "fairly firm tones" and as "a very officious tone." Constable Murphy was in the process of booking N and he heard what he described as "a very lively discussion," but he was unable to tell what was being said.

Corporal Waite says he remonstrated with Mr. Robinson and told him to settle down. He told Robinson that they (the police) wouldn't put up with this "bullshit" or words

to that effect. He threatened to put Mr. Robinson in a strait-jacket, and told him that the police were too busy, and that he (Robinson) would have to smarten up.

Corporal Waite testified that Mr. Robinson again made remarks which Corporal Waite interpreted as threats to himself and to his family. He said that he thought Mr. Robinson wanted to fight. By his own assessment, Corporal Waite does not lose his temper easily but takes threats to his wife and family seriously. In that context, he said he threatened Mr. Robinson in turn. Mr. Robinson recalled that both he and Corporal Waite said threatening things to one another and that they were both upset. Corporal Waite denied being upset. It is agreed that Corporal Waite wagged his finger or motioned with his hand at Mr. Robinson while they were thus engaged in face to face conversation.

What happened next is not so clear. Corporal Waite testified that Mr. Robinson grabbed for his finger; believing he was about to be assaulted, the Corporal kicked Mr. Robinson's feet out from under him; Mr. Robinson grabbed his leg; believing that Robinson was going to bite him, the Corporal picked Mr. Robinson up by the hair. Corporal Waite further testified that, believing he was to be assaulted, he kicked Robinson's feet out from under him a second time; Robinson then grabbed the Corporal by the leg and wrapped himself around that leg; Corporal Waite tried to shake Mr. Robinson off and then grabbed him by the hair and again lifted him to his feet. Corporal Waite said at that point Mr. Robinson indicated a willingness to cooperate, and he was returned to the cell.

Mr. Robinson tells a somewhat different tale. He testified that Corporal Waite punched him in the stomach and that he grabbed for Corporal Waite's finger as he was falling to the floor. He then grabbed the Corporal's leg, but Corporal Waite got his leg free and kicked Mr. Robinson in the stomach three times, picked him up by the hair, and

slammed him into the wall. Mr. Robinson said that Corporal Waite then returned him to the cell.

Constable Sorokan testified that his attention was divided between N in the booking-in room and Mr. Robinson and Corporal Waite in the Interview Room. As a result, Constable Sorokan had returned to the booking-in room after observing Corporal Waite and Mr. Robinson begin their face to face discussions. Shortly thereafter he went back to the doorway between the two rooms in time to hear Corporal Waite say, "Don't do that again" and observe Corporal Waite sweep Mr. Robinson's feet out from under him. He saw Mr. Robinson fall on his left side and grab Corporal Waite's leg, wrap his arms around the lower leg, and assume a fetal position. He says Corporal Waite told Mr. Robinson to let go and tried to shake the prisoner off his leg. Constable Sorokan then saw Corporal Waite lean over and with both hands pick Mr. Robinson up by the hair. At this point, Constable Sorokan said Mr. Robinson was resisting somewhat. However, feeling that Corporal Waite was not in need of assistance, Constable Sorokan turned his attention back to the booking room.

During these events, Constable Murphy was booking in N. In his evidence Constable Murphy said he could see none of what was going on in the Interview Room. He testified that he heard a lively discussion, a thump or a bang which he described as sounding "like a book or a chair falling" and another noise which could have been consistent with a person being knocked down or slammed against the wall. Constable Murphy said N asked, "Are you putting the boots to someone?" or a similar question. He told N, who seemed to be stimulated by the sounds, to remain seated.

How long Mr. Robinson was in the Interview Room with Corporal Waite is unclear. Constable Murphy estimated the interval at between five and ten minutes. Constable Sorokan gave evidence that it was three to four minutes. Nobody made notes

of the incident that evening, and Corporal Waite did not record the return of Mr. Robinson to the cell in the cell log, an omission for which he accepts full responsibility.

Mr. Robinson testified that the actions of Corporal Waite in the Interview Room injured his ribs, but none of the policemen noticed any signs of injury, and Robinson voiced no complaint. Constable Murphy said Mr. Robinson was doing Kung-Fu-like movements when he (Murphy) placed N in the cells at 0308 hours. By that time, Corporal Waite had returned to his office in the administration section of the Detachment building. The guard, Mr. Marshall, who, by his own account, leaves the cell area and goes to the General Office when the police are dealing with prisoners, had returned with the cell log book to the vicinity of the cell area. His log entry of 0321 hours indicates that, of all the prisoners, only D2 was asleep in the cell at that time.

At 0325 hours, the guard noted in the log that N assaulted Mr. Robinson. He reported to Corporal Waite that a fight was in progress. Corporal Waite went to the cell area, saw no fighting, but saw N kick Mr. Robinson in the midsection. Corporal Waite questioned the other prisoners about the dispute. Nobody had seen anything. He observed that Mr. Robinson had injuries to his face. Corporal Waite returned to his office.

At 0330 hours the guard reported to Corporal Waite that the same two prisoners were fighting, and Corporal Waite went to the cell area and saw a fight in progress. In a report written less than 24 hours later, Corporal Waite noted that "prisoners Robinson and N were fighting again. Robinson in fist fight had superficial cuts to face and nose. This fight a little more blood with eyes reddish. N had a bleeding nose." Corporal Waite recorded N's account that he had been "sucker punched" by Robinson. Corporal Waite observed that Mr. Robinson was on the cell floor by the toilet holding his head. The arrival of Corporal Waite at the cell apparently ended the fight.

Again at 0336 hours - 6 minutes later - Corporal Waite records a third fight in his own hand in the cell log. The entry noted that he told Robinson and N to "settle down" and recorded that Robinson "sucker punched" N. He testified, however, that when he arrived at the cell area on this occasion, he saw Mr. Robinson on the floor with his back against the steel leg which supports the bunk. N was standing over him holding on to the top bunk and kicking Mr. Robinson as if he were trying to push him underneath the bottom bunk. Corporal Waite hollered at them and N went directly to another bunk and sat down. Corporal Waite observed Mr. Robinson holding himself at the midsection. On enquiry by Corporal Waite about the event, Mr. Robinson said he had fallen off the bunk.

In his September 30th report, Corporal Waite records that after each fight he asked the prisoners, N and Robinson, what had happened. He made no mention of asking how they were feeling physically or whether they needed medical attention. He made no note of the apparent injuries of either of them.

After the fight between prisoners Robinson and N, logged at 0336 hours, Corporal Waite remained in the Detachment until 0410 hours when he logged a check of the prisoners. Before going off duty, he told Mr. Marshall to call him at home if there was any more fighting among the prisoners. Constables Murphy and Sorokan went off duty at approximately 0430 hours. Each claimed to have checked the prisoners before leaving. Of those two officers, only Constable Sorokan noted in the cell log, at 0438 hours, that all of the prisoners were awake and talking. In his evidence before the Commission, Constable Sorokan stated that he checked the prisoners for between five and ten seconds from the cell area door and that he noticed no injuries to Mr. Robinson's face. Neither Corporal Waite, Constable Sorokan, nor Constable Murphy made any note of the physical condition of any prisoner or recorded any request for medical treatment.

Between 0438 and 0800 hours, only Mr. Marshall remained on duty. His log entries indicate that as early as 0452 hours, he noticed that Mr. Robinson was sick. Half an hour later, at 0525 hours, he has noted that Mr. Robinson was sticking his finger down his throat trying to be sick.

Loud talking was observed between 0541 and 0610 hours. What the prisoners were talking about is not recorded. N, Mr. Robinson, and D2 all gave evidence before the Commission that they were yelling and trying to get the guard's attention to let him know Mr. Robinson needed to see a doctor. They are not clear as to the time of day.

D2 says he yelled, "This guy needs a doctor," referring to Robinson, but nobody came into the cell block. He testified that the guard, whom he described as an older fellow, looked through the window for a second and walked away.

N testified that as Mr. Robinson sobered up his physical condition worsened. N also said three prisoners called out for assistance but that nobody paid attention. His evidence is that an old man who was "cleaning up" came in and they asked him to help and that the old man said he'd try. N said D2 was one of the three men asking for help.

During this time, according to D2, Mr. Robinson was trying to vomit and spat up blood a couple of times.

The guard has recorded that Mr. Robinson was "puking in the urinal" as late as 0635 hours while the other prisoners were asleep. Between 0647 and 0705 hours, as recorded by Mr. Marshall, all prisoners were asleep. However, at 0711 hours he noted that Mr. Robinson was sitting naked on the toilet and later, at 0721 hours, that he was dressed and seated on the floor. At 0729 hours, Mr. Marshall records that Mr. Robinson requested to be let out and that he, Mr. Marshall, denied that request.

At 0800 hours, Constable Sach and Constable (now Corporal) Crawford came on duty. Corporal Crawford was briefed by Mr. Marshall that there had been some fights between prisoners Robinson and N during the night. Corporal Crawford testified that he checked on the prisoners but made no notation in the cell log. He saw Mr. Robinson and noticed the blood smears and smudges on his face. Some of his cuts were covered by toilet tissue which Mr. Robinson was holding to his face.

Corporal Crawford said he asked Mr. Robinson who had injured him and, receiving no response, concluded that Mr. Robinson either could not or would not say. He noted Mr. Robinson as being pale and obviously injured. He denied that he noted Mr. Robinson to be yellow in colour.

Corporal Crawford released prisoners D2 at 0825 and D1 at 0830 hours. By the time he came to release Mr. Robinson at 0835 hours, he noticed that Mr. Robinson was moving very slowly, was favouring his ribs or side, and that his face was marked up. Corporal Crawford testified that the injuries to Mr. Robinson's face which he observed were in the same location as those shown in the photographs taken at the Sechelt Hospital but looked worse in the photographs. Corporal Crawford did not ask Mr. Robinson if he wished medical attention, and Mr. Robinson did not ask for medical attention.

In the course of releasing Mr. Robinson, Corporal Crawford made a CPIC check which disclosed an outstanding warrant for Mr. Robinson's arrest at Sechelt. Mr. Robinson had failed to pay a fine. He was thereupon rebooked into the cells but was allowed to telephone relatives to arrange to have the fine paid. During the course of his being released and rebooked, he was observed by guard Marshall who says he saw nothing remarkable about Mr. Robinson's appearance. Mr. Marshall's evidence is that Mr. Robinson was able to put on and remove his boots without apparent difficulty.

While being rebooked, Mr. Robinson phoned his brother, Ken. The conversation was overheard, at least in part, by guard Marshall.

Marshall testified that he overheard Mr. Robinson tell his brother he had been beaten up or that he was a mess "... worse than the last time." Guard Marshall also reported that Mr. Robinson said he wanted to get out to catch the 10:30 a.m. ferry to Vancouver. This is denied by Mr. Robinson. Mr. Robinson persuaded his brother to go to Sechelt to pay the fine. The payment of the fine was reported to the Gibsons Detachment, and Mr. Robinson was released.

Before he was finally released, Mr. Robinson was seen by Constable Sach who had come on duty about 0800 hours on September 30th. Constable Sach saw Robinson in the cell, observed his facial injuries, and asked, "What the hell happened to you?" Mr. Robinson, who was in the cell with N at the time, replied, "It's a long story." Constable Sach testified that the facial injuries he observed were those shown on the exhibited photographs of Mr. Robinson taken at Sechelt Hospital later that day.

Constable Sach released N at 0925 hours. He was also given the task of taking N to the house in Langdale where he had been arrested with instructions to stand by while N removed his possessions from the residence he had been sharing with his cousin. While he was being released and on the way to Langdale, N talked about the events of the night before and the injuries received by Mr. Robinson. In unsolicited comments, N told Constable Sach he had seen another policeman take Mr. Robinson to the room next to the booking room and had heard thumping sounds and shouting but that he hadn't seen what had happened to Mr. Robinson. N told Constable Sach that he and Mr. Robinson had been in a fight in the cell but that he, N, had only hit him in the face and had not "put the boots to him."

Constable Sach said he felt at the time that N may have been covering up for himself. He reported the conversation to Corporal Crawford on his return to the Detachment but made no notes of this conversation or the particulars of N's account of these events.

Meantime, Corporal Crawford was, for the second time, processing the release of Mr. Robinson. On neither of the release forms (Prisoner Records) prepared for Mr. Robinson was any note made of his facial injuries or that he was favouring his left side or that he had been observed vomiting while in the cell. Mr. Robinson was not asked if he required, or offered, medical attention or transportation on release.

Upon his release at 0937 hours, Mr. Robinson walked a short distance up School Hill Road and collapsed on the street. He was assisted by a passing motorist who hailed a taxi to take Mr. Robinson to the Sechelt Hospital.

Taxi driver, Glen Landsborough, gave evidence that he drove Mr. Robinson to the Sechelt Hospital. He testified that during the trip Mr. Robinson was bent over, leaning against the door, and mumbling. Mr. Landsborough is hard of hearing and did not hear what he said. He gave Mr. Robinson some paper towel to wipe blood off his face and because he was "leaking at the mouth." Mr. Robinson's skin appeared dark and yellowish to the cab driver. He was not the normal colour of a healthy person.

Mr. Landsborough stopped his taxi three times on the way to Sechelt, all at Mr. Robinson's request. Mr. Robinson says he attempted to be sick on these occasions but could manage only dry heaves. Mr. Landsborough had no evidence to give on whether Mr. Robinson was sick on these occasions. At one point, Mr. Robinson rolled the window down and leaned his head out. Near the Sechelt Hospital, Mr. Robinson got out of the car and walked slowly and unsteadily to the bushes, apparently to go to the bathroom.

Mr. Robinson did not reenter the vehicle. Instead, he walked a short distance to the hospital where records show he was admitted at 1020 hours.

At the Sechelt Hospital, Mr. Robinson was admitted by Dr. Evison who was on duty in the Emergency Department. Doctor Evison gave evidence that, on admission, Mr. Robinson was alert. He complained loudly of injury and pain in the chest and abdomen and was observed to be suffering from severe contusions over the nose, left eye, and left cheek region. Dr. Evison found his blood pressure to be low and his pulse elevated. He diagnosed shock and possible loss of blood. Mr. Robinson was given fluid resuscitation to bring him out of shock. On further examination, he exhibited pain over his anterior chest wall at the left 7th rib and was having difficulty breathing. His abdomen was rigid with signs of tenderness. On sounding, Dr. Evison was unable to hear Mr. Robinson's organs. Abdominal trauma was indicated by Mr. Robinson's "guarding" and the Doctor's concerns were for a ruptured spleen or liver. An ultrasound test indicated a considerable quantity of free blood in the abdominal cavity but no obvious tears to the liver or spleen.

Dr. Evison consulted Dr. MacIntyre, a surgeon on duty, who concurred in the findings and suggested that, following stabilization, Mr. Robinson be transferred by air ambulance to the Lions Gate Hospital in North Vancouver where a greater blood supply would be available and better ancillary care could be provided.

Dr. Evison said the facial injuries appeared to have been received within the previous twelve hours. He could not say when the abdominal injuries occurred.

Dr. Evison said it was obvious to him and to the nurses, at the time of admission, that Mr. Robinson had been badly injured. In Dr. Evison's opinion, without proper medical attention Mr. Robinson's condition could have become critical in a matter of hours.

Before Mr. Robinson was taken to Lions Gate Hospital, his mother, Mrs. Beverley Farewell, was contacted by Dr. Evison. He informed her that Donald Robinson had been severely beaten, and he suggested that a family member attend.

Mr. and Mrs. Farewell (stepfather and mother) and Donald Robinson's brother, Kenneth, attended the hospital. Kenneth Robinson arranged for a photographer to take photos of Donald Robinson, and these were presented as evidence before the Commission. Donald Robinson was airlifted to North Vancouver by helicopter shortly before 1400 hours.

Hospital records show that Donald Robinson reported to the physician that he had been beaten both by cellmates and the police. Mrs. Farewell testified that her son pointed to his face and mumbled words indicating his cellmates had done those injuries and pointed to his abdomen and mumbled words indicating the police had caused those injuries.

Informed of these allegations, Kenneth Robinson went to the Sechelt RCMP Detachment seeking advice from members of the Force whom he knew. They apparently told him he would have to make his enquiries at the Gibsons Detachment. Ken Robinson attended the Gibsons RCMP Detachment in the afternoon of September 30, 1988 and spoke to Constable Sach. Ken Robinson testified that he told Constable Sach in private that he wanted some answers. Constable Sach confirmed that Ken Robinson told him that his brother, Donald, alleged that he had been seriously injured in the Gibsons RCMP Detachment cells and that he had been airlifted to hospital in North Vancouver.

Constable Sach told Ken Robinson that Sergeant Hill was in charge of the Detachment but that he was on holiday and there was another officer in charge. He suggested that he speak to one of the officers who had been on duty the night before.

Ken Robinson admitted he was upset. He told Constable Sach that this was "bullshit." He indicated the matter would not end there. Ken Robinson said he felt Constable Sach was going to look into the matter.

At 1600 hours on September 30, 1988, Donald Robinson's mother, Beverley Farewell, phoned the Gibsons RCMP Detachment to complain about the beating which Donald Robinson had received while in cells and of the failure of the police to get him necessary medical treatment. This call resulted in the opening of a file by Constable Bourrie. Coincidentally, Sergeant Hill, who had been absent on duty from Gibsons, returned and tried to return her telephone call at 1620 hours. At 1655 hours, Corporal Crawford, on the instructions of Sergeant Hill, spoke to Mrs. Farewell by telephone and made notes of her complaint in the Continuation Report in the newly-opened file. The essence of her complaint was:

1. negligence by the police for failure to provide ambulance or medical assistance to her son, Donald Robinson;

2. criminal charges against other prisoners for assault on Donald Robinson.

Corporal Crawford advised Mrs. Farewell that Sergeant Hill would see her on October 3, 1988 at 0830 hours. His report noted that the RCMP officers would "begin to document the circumstances in the meantime."

Sergeant Hill gave evidence that he spoke to a member or members of the Detachment from his home over the weekend regarding this matter but has no clear recollection of receiving details of the matter other than the call from Mrs. Farewell and that a meeting had been arranged for October 3rd. He made no notes of the

conversations. He says it was his practice to instruct officers to write everything down, but he has no recollection of whether he did so in this case. He made no notes himself until the Robinson/Farewell appointment on Monday, October 3rd.

The meeting with Mr. and Mrs. Farewell and Mrs. Robinson (Donald Robinson's stepmother) took place shortly after Sergeant Hill came on duty on Monday morning. In his evidence, Sergeant Hill was unable to say whether he had completed his review of the file before the meeting.

Before they met Sergeant Hill, Mrs. Robinson and Mr. and Mrs. Farewell had agreed that they would confine their complaints to the police allowing Donald Robinson to be injured while in their care and the apparent failure of the police to provide Donald Robinson with access to proper medical attention. Mrs. Robinson suggested that if Donald Robinson wanted to complain about being assaulted, he should make that complaint on his own. When Sergeant Hill enquired whether there was any allegation of police brutality, Mrs. Robinson and Mr. and Mrs. Farewell said they were not prepared to say.

Sergeant Hill appeared to read to Mrs. Robinson and the Farewells from a prepared report, quoting events and times. Mrs. Robinson took notes of the information provided by Sergeant Hill and their conversation. Her notes appear to be the only record of the interview.

In the interview, Sergeant Hill suggested that Mrs. Robinson and Mr. and Mrs. Farewell might be wasting their time since their son might not carry his complaint through. Mrs. Robinson and Mr. and Mrs. Farewell told Sergeant Hill that each of them intended to make a separate complaint, but they were advised by Sergeant Hill that one complaint would be sufficient. He assisted Mrs. Farewell to fill out an RCMP Complaint Form.

Later that day, October 3rd, Sergeant Hill was telephoned by Donald Robinson from Lions Gate Hospital. Donald Robinson was returning a call made by Sergeant Hill. A tentative appointment had been arranged. Donald Robinson told Sergeant Hill that he had been instructed by his lawyer not to give a statement to the police right away and that he was going to take advice from the lawyer. Sergeant Hill advised him that there would be no investigation until Robinson made a complaint.

Except for the taking of a statement from the proprietor of Elfie's Cabaret, Sergeant Hill did not interview any potential witnesses while he was in charge of the investigation of the complaints made by Mrs. Robinson and Mr. and Mrs. Farewell. He did not interview his own Detachment officers in any systematic way and kept no notes of what he described as "coffee-table conversations" which he had with them about the events of September 30th. He testified that he wanted to speak to Donald Robinson first and urged Mrs. Robinson and Mr. and Mrs. Farewell to persuade Donald Robinson to come into the Gibsons RCMP Detachment to speak to him. Donald Robinson was reluctant to go to the Gibsons Detachment after his release from the Lions Gate Hospital, according to the evidence of his stepmother. Requests were made of the RCMP by Mrs. Robinson and the Farewells to have someone other than the Detachment Commander at the Gibsons RCMP Detachment investigate their complaint and take Donald Robinson's statement. Sergeant Hill was insistent that it was his responsibility to take the statement. Donald Robinson suggested that he might make the statement in Sechelt, either to Detachment officers there or to the Crown Counsel for the area.

On October 26, 1988, Mr. and Mrs. Farewell and Mr. and Mrs. Robinson sent a letter of complaint to Deputy Commissioner Wilson, RCMP "E" Division.

On October 26, 1988, Donald Robinson made a formal complaint by completing an RCMP Complaint Form in the presence of Sergeant Hill.

The file was turned over to Sergeant Sanderson of the RCMP Complaints & Internal Investigations Section. Between October 26, 1988 and March 16, 1989, Sergeant Sanderson conducted an internal investigation which resulted in a March 16, 1989 allegation against Corporal Waite containing five counts. These allegations and the findings following the investigation are contained in Exhibit 78 to the proceedings before the Commission. Since they are relevant to the complaints before the Commission, they are repeated here.

Allegation Count #1

That you conducted yourself in a disgraceful manner by physically assaulting a prisoner in your care and custody, one Donald John ROBINSON while you were on duty.

Finding: UNSUBSTANTIATED

There are a number of discrepancies, in the accounts of what took place, by ROBINSON and N. They agree to the point that both state that N beat ROBINSON badly during three separate incidents. N's statement claims that he observed Cpl. WAITE punching ROBINSON two or three times in the ribs while ROBINSON was being held by another member, Cst. SOROKAN. This is disputed by the three on duty members, and by ROBINSON himself, who claims that only he and WAITE were present in the interview room, and that WAITE kicked him in the abdomen. N also claims to have observed the punches thrown by WAITE, while WAITE, SOROKAN and MURPHY agree that both ROBINSON and WAITE were well inside the interview room, out of view of N's position in the Booking in room.

N, upon his release from custody, told Cst. R. Sach that he did not see the WAITE-ROBINSON interaction, that he had heard it. Yet, his statement claims that he witnessed it.

ROBINSON's removal from the cells was a proper action on Cpl. WAITE's part, in order to get ROBINSON to settle down as ROBINSON had already assaulted prisoner D1. While in the interview room, WAITE took defensive action when ROBINSON

grabbed his hand. WAITE swept ROBINSON's feet from under him, causing ROBINSON to fall to hip. This action is not believed to have caused ROBINSON's abdominal injury. ROBINSON grabbed Cpl. WAITE's leg. WAITE states that he thought ROBINSON was about to bite him, so he grabbed ROBINSON by the hair and pulled him to his feet. ROBINSON then went into a Martial Art stance. WAITE, fearing an assault by ROBINSON again swept his feet from under ROBINSON, again causing ROBINSON to fall to the floor. This action is not believed to have caused ROBINSON's injuries.

Cst. SOROKAN witnessed one of the foot sweeps by WAITE and denies that WAITE kicked or punched ROBINSON.

ROBINSON recalls grabbing WAITE's finger, but states "he picked me up by the hair, rammed me into the wall, pushed and shoved me back to the cells".
Other witness accounts, WAITE, SOROKAN, MURPHY and Prisoner S suggest that ROBINSON walked back to the cells under his own power. S states that when ROBINSON "came back in, he didn't look any worse than when he went out so I guess they just told him to settle down".

Allegation Count #2

That you, being the senior member on duty, knowing that Donald John Robinson had been injured by another prisoner in the cells, failed to arrange for his examination by a qualified medical practitioner;

Finding: UNSUBSTANTIATED

Cpl. WAITE and others including Dave MARSHALL, S, Cst. P. MURPHY and Cst. M. SOROKAN all agree that no one in the cells, including ROBINSON, at any time sought medical aid for ROBINSON. It is reasonable to assume that none of these persons had any cause to have ROBINSON examined by a Doctor, as he displayed no signs of being injured, apart from one or two minor scrapes on his face, until after Cpl. WAITE and the two Constables completed their shift and departed the Detachment.
Policy - Gibsons Landing Det. Unit Supplement - III.3.B.1

Allegation Count #3

That you, being the senior member on duty, knowing that Donald John ROBINSON had been injured by another prisoner in the cells, failed to note the information on the Form C-13-2 regarding ROBINSON's injuries;

Finding is SUBSTANTIATED

Cpl. WAITE indicates in his statement that he observed N kick ROBINSON or apply pressure to ROBINSON'S abdomen on two occasions. These two incidents, coupled with the knowledge of the beatings administered by N on ROBINSON, should have been recorded on the C-13-2 as required by policy, to alert Mr. MARSHALL and the following shift members, of what had occurred in the cells. Had MARSHALL been aware of the fact that ROBINSON had been kicked in the abdomen, when ROBINSON commenced vomiting at 0525 hours, after WAITE and the Constables had departed the Detachment, it probably would have prompted him to contact the member on call.
Policy - Op. Man. III.3.F.5.6.7

Allegation Count #4

That you, being the senior member on duty, failed to provide adequate protection for Donald John ROBINSON from another prisoner in the cells;

Finding is SUBSTANTIATED

It is clearly evident, in hindsight, that ROBINSON should have been removed from the Gibsons Detachment cells and escorted to Sechelt Detachment, as had been contemplated by Cpl. WAITE, after ROBINSON's altercations with D1.

ROBINSON was the aggressor against D1, however, after N was lodged, ROBINSON became the victim.
Policy - Op. Man. III.3.C.17

Allegation Count #5

That you, being the senior member on duty, failed to record, in the Prisoner Log Book, the removal of, and subsequent return of Donald John ROBINSON to the cells;

Finding is SUBSTANTIATED

At approximately 0300 hours on 88.09.30, Cpl. WAITE removed ROBINSON from the cell then returned him to the cell several minutes later. As the senior member on shift, and the member responsible for this action, Cpl. WAITE was bound by policy to note unusual conditions, such notations to be made in the Prisoner Log Book. The Gibsons Detachment Prisoner Log Book shows no such entry.
Policy - Gibsons Landing Detachment Unit Supplements III.3.L.2.iii"

On the three substantiated allegations as found by Sergeant Sanderson, Corporal Waite was disciplined by the Royal Canadian Mounted Police. No allegations were made with regard to any of the other officers or the night guard, David Marshall, arising out of these incidents. The nature of the discipline imposed on Corporal Waite has not been disclosed.

During the course of the investigation undertaken by the Complaints & Internal Investigations Section, RCMP "E" Division, a report was made to Crown Counsel alleging the assault of Mr. Robinson by Corporal Waite. A copy of that report was sent to Mr. Robinson on February 14, 1989. On April 3, 1989, Regional Crown Counsel Robert H. Wright, Q.C., wrote to Sergeant W. R. Douglas, Acting Officer in Charge of the Complaints & Internal Investigations Section expressing the opinion that, based on the reported investigation, Corporal Waite would not be convicted of assaulting Mr. Robinson. No charge of assault or other criminal proceedings were instituted against any person in respect of the subject matter of Mr. Robinson's complaint.

On May 3, 1989, a letter was sent to Mr. Robinson by Chief Superintendent A. G. Clarke, RCMP "E" Division, conforming to the report required under Section 45.40 of the RCMP Act.

On June 20, 1989, Mr. Robinson wrote to the RCMP Public Complaints Commission, expressed dissatisfaction with the RCMP's disposition of his complaints dated October 26, 1988, and requested a review of the disposition of those complaints.

On August 14, 1989, a letter was sent to Mrs. Farewell by Chief Superintendent A. G. Clarke, RCMP "E" Division, generally conforming to the report required under Section 45.40 of the RCMP Act.

On August 29, 1989, Mrs. Farewell wrote to the RCMP Public Complaints Commission, expressed dissatisfaction with the RCMP's disposition of her complaints dated October 3, 1988, and requested a review of the disposition of those complaints.

Within the ambit of the narrative of these events, the Commission has pursued its enquiry into the complaints of Donald J. Robinson and Beverley M. Farewell.

3. THE COMPLAINTS

3.1 Complaint of Donald J. Robinson

On October 26, 1988, Donald J. Robinson made a formal written complaint to the RCMP as follows:

(a) In the early morning of September 30, 1988, I was assaulted by Cpl. Bruce Waite in a room adjacent to the cells in the Gibsons RCMP Detachment.

(b) I am also complaining that I was not given medical treatment after I was put back in cells and I was assaulted further by persons in the cells.

(c) I was also denied the right to go to a hospital in the morning due to an outstanding fine.

3.2 Complaint of Beverley M. Farewell

On October 3, 1988, Beverley M. Farewell made a formal written complaint as follows:

(a) that her son, Donald J. Robinson, received no medical attention during the time he was in the cell at the RCMP Detachment, Gibsons, B. C.

(b) who caused the injuries and how could the infliction of injuries be allowed to happen.

3.3 Complaint of B. Farewell, T. Farewell, R. Robinson, and N. Robinson

On October 7, 1988 these persons, the mother, stepfather, father, and stepmother respectively of Donald J. Robinson, made a complaint by letter addressed to Deputy Commissioner D. K. Wilson, RCMP "E" Division. The letter repeats the complaint made by Beverley M. Farewell on October 3, 1988 and concerns itself with the sustaining of the injuries and the failure to provide medical attention.

4. FINDINGS

Based upon the evidence presented at the Public Hearing into each of the several complaints, and the representations made by or on behalf of the parties, the Commission makes the following Findings:

4.1 Donald J. Robinson was arrested on September 29, 1988 because of his state of intoxication in a public place and placed in the cell at the RCMP Detachment, Gibsons, B. C. on September 30, 1988. The RCMP took this action under the authority of subsection 81(1) of the Offence Act of British Columbia which provides as follows:

> 81. (1) Where a peace officer finds in a place to which the public has access a person who is in a state of intoxication, he may take that person into custody and, if it appears that the person may be in need of remedial treatment by reason of the use of alcohol, he shall, within 24 hours, take him before a physician; otherwise, that person shall be released
>
> (a) on recovering sufficient capacity to remove himself without danger to himself or others or causing a nuisance; or
>
> (b) if application is made sooner by an adult who appears to be capable of taking charge of the person, into the charge of the applicant.

At the time of being placed in the cell, the Prisoner Record noted that Mr. Robinson was to be released when sober. No entry was made in the Prisoner Record of the medical condition of Mr. Robinson or of any need for remedial treatment by reason of his use of alcohol. No attempt was made by the

arresting officer to ascertain if there was any adult person capable of taking charge of Mr. Robinson as contemplated in subsection 81(1)(b).

4.2 Once Mr. Robinson had been placed in the cell, the relationship between him and the RCMP cast a duty on them to take reasonable steps to safeguard the wellbeing of Mr. Robinson. This issue has been the subject of consideration by the courts in British Columbia in a number of cases, some remarkably similar to the circumstances revealed at the Public Hearing. Based on these decisions, it is clear that the RCMP owed a duty to Mr. Robinson to exercise reasonable care to protect him from foreseeable risks which would include the taking of all reasonable means to ensure that he suffered no injury as a result of his own intoxicated condition or the actions of others.

4.3 At the time Mr. Robinson was placed in the cell, he was uninjured. By the time of his release, he had sustained severe injuries which, following his release, were diagnosed as severe facial contusions and abdominal trauma accompanied by internal bleeding. These injuries required that he be hospitalized for treatment at Sechelt, B. C. and later transferred to Lions Gate Hospital in North Vancouver. These injuries were the result of physical force inflicted upon Mr. Robinson during either or both of two incidents which occurred at the RCMP Detachment, Gibsons, B. C. between 0100 hours and 0340 hours on September 30, 1988.

4.4 The first of these incidents occurred shortly after Mr. Robinson was placed in the cell when, as a consequence of his unprovoked attack on another prisoner, he was removed from the cell by Corporal Waite and taken to a nearby room. On that occasion he was twice assaulted by Corporal Waite by having his feet kicked out from under him so that he fell to the floor whereupon Corporal Waite

pulled him to a standing position by his hair. These two assaults were confirmed by the evidence of Constable Sorokan. Mr. Robinson alleges that during this time he was punched and kicked in the stomach by Corporal Waite. This is denied by Corporal Waite. The prisoner N testified that he had observed this incident but the physical evidence of his location while the events were taking place plus the denial by Mr. Robinson of this description renders this testimony unacceptable. Considering all of the evidence, the Commission is unable to conclude whether an assault of the nature alleged by Mr. Robinson occurred or not.

4.5 The Commission finds no justification for these assaults by Corporal Waite and, in light of what subsequently transpired, questions his professional judgment in removing Mr. Robinson from the cell.

4.6 The second of the incidents took place in the cell and consists of three separate fights or altercations between Mr. Robinson and the prisoner N during a 15-minute period commencing at 0325 hours. The first of these fights was noted by the civilian guard in the cell log; Corporal Waite was called to the cell, but the fight had ended before his arrival. When the second altercation occurred Corporal Waite was again called to the cell and, on his own testimony, observed the prisoner N kick Mr. Robinson in the midsection. Following this fight, Corporal Waite also observed that Mr. Robinson had injuries to his face accompanied by bleeding. The third fight was noted in the log by Corporal Waite. He testified that upon being called to the cell by the civilian guard, he saw Mr. Robinson lying on the floor of the cell with his back against the leg of the steel bunk. The prisoner N was holding on to the bunk and kicking Mr. Robinson as if to force him under the bunk. When the fight

stopped, Corporal Waite observed that Mr. Robinson was holding himself at the midsection of his body.

Mr. Robinson testified that the blows struck by the prisoner N were to his face and not to any part of his body other than his face.

From the evidence given at the public hearing, it is unclear as to the reason for these three altercations, and it is impossible to determine whether Mr. Robinson or the prisoner N was the aggressor.

4.7 At no time during or after the three altercations between Mr. Robinson and the prisoner N did Corporal Waite or any other officer on duty take any action to separate these two prisoners or otherwise prevent the recurrence of these encounters. The failure to take such action calls into question the purpose for which Mr. Robinson was earlier removed from the cell following his unprovoked attack on another prisoner.

4.8 At no time during or after these three altercations did Corporal Waite or any other officer on duty enquire of or examine either Mr. Robinson or the prisoner N to ascertain whether injuries had been sustained which might require medical treatment.

4.9 At different times between 0400 hours and 0430 hours, Corporal Waite and Constables Murphy and Sorokan went off duty and before doing so visited the cell to check on the prisoners. On their evidence, none of these officers observed the facial injuries sustained by Mr. Robinson as disclosed by the photographs taken at Sechelt Hospital, observed or noted any other injury, or received any request from him for medical treatment. The Commission is

satisfied from the evidence of Mr. Robinson's physical condition on the morning of September 30, 1988, and in particular the evidence of Corporal Crawford and Constable Sach that these facial injuries were clearly visible, and finds that these officers neglected to observe the condition of the prisoner before transferring the sole responsibility for his care to the civilian guard. The Commission concludes that the visit to the cells before going off duty was a matter of routine for these officers and was not a matter of serious practice for the purpose of determining the condition of the prisoners.

4.10 Between 0430 hours and 0800 hours, the civilian guard, Mr. Marshall, was the only person on duty at the Detachment. He continued his periodic observations of the prisoners in the cell and on at least two occasions observed Mr. Robinson vomiting. He did not respond in any way to what he saw either by enquiring from Mr. Robinson as to his condition or by calling for assistance. He ignored or failed to appreciate the medical significance of what he observed.

4.11 Between 0540 hours and 0610 hours, the civilian guard recorded in the cell log that there was loud talking by the prisoners. What they were saying was not identified. Mr. Robinson and the prisoners N and D2 testified that they were, during this period, yelling to attract the attention of the guard in order to get medical assistance for Mr. Robinson. During the giving of his evidence, the Commission noted that the civilian guard, Mr. Marshall, appeared to have some hearing impairment. It makes no specific finding in this regard but questions the use of a civilian guard who is unable to hear or does not take care to hear what is said by the prisoners. The maintenance of the cell log is pointless if a request for help is not heard or is ignored.

4.12 Corporal Crawford came on duty at 0800 hours on September 30, 1988, and learned from the guard of the fights between Mr. Robinson and the prisoner N. He made a check of the prisoners in the cell and noticed the blood smears and smudges on Mr. Robinson's face. No notation of this was made in the cell log. Later, during the release procedure, Corporal Crawford observed that Mr. Robinson was moving slowly, favouring his ribs or left side, and saw the injuries to his face which appear on the photographs taken in the Sechelt Hospital. No record was made of these observations in the Prisoner Record although a section is provided for this purpose. Corporal Crawford did not question Mr. Robinson about his physical condition or make any effort to ascertain whether there was need for medical attention.

The Commission notes that the facial injuries sustained by Mr. Robinson as shown on the photographs were also observed by Constable Sach during his brief visit to the cell in the course of releasing the prisoner N.

4.13 Except for the cell log, there were no records maintained at the RCMP Detachment with respect to any of these incidents occurring while Mr. Robinson was in custody. None of the officers on duty kept any personal notes of these events and the only report of these occurrences was prepared by Corporal Waite. In spite of the telephone complaint to the Detachment office by Mrs. Farewell on the afternoon of September 30, 1988 which resulted in the scheduling of a meeting with Sergeant Hill for October 3, 1988 and the opening of a file by Constable Bourrie, none of the officers who were on duty during the time Mr. Robinson was a prisoner made or was requested to make any report. Sergeant Hill, the officer commanding the Gibsons Detachment, had discussions with these officers between September 30 and October 3, 1988 which he characterized as "coffee-table conversation." Notwithstanding the filing of

a formal complaint by Mrs. Farewell, no active steps were taken to investigate the matter until Mr. Robinson filed his formal complaint on October 26, 1988. The matter then became the responsibility of the Complaints & Internal Investigations Section, RCMP "E" Division.

4.14 The Commission finds that there was a failure on the part of Corporal Waite and others on duty on September 30, 1988 to discharge the duty imposed upon them in respect of the incarceration of Mr. Robinson. This is evidenced by the two assaults by Corporal Waite on Mr. Robinson, by his failure to intercede in and prevent the recurrence of the fights with the prisoner N, and by his failure to observe the physical condition of Mr. Robinson and assess the need for medical attention. In this latter respect, Constables Murphy and Sorokan and the civilian guard, Mr. Marshall, must share responsibility. It is remarkable that none of them observed or responded to injuries which were clearly evident and warranted enquiry. Corporal Crawford also bears a responsibility in this regard, since, being advised by the guard, Mr. Marshall, that there had been fights in the cells and observing the condition of Mr. Robinson at the time of his release, he made no assessment of the need for medical treatment of the prisoner and allowed him to leave the Detachment building just moments before he collapsed on the public street and was taken to hospital. In the circumstances surrounding these complaints, the duty of care carries with it the duty to observe and respond intelligently to the observable condition of the person to whom the duty is owed.

4.15 The Gibsons Detachment maintains an Operational Memorandum for guards and matrons pertaining to the Care and Handling of Prisoners and Mental Patients. Much valuable information is contained in this manual, and there is specific direction as to the action which is to be taken when there is any

indication of the need of medical aid by any person in care or custody. The Commission notes that the signed acknowledgments by Detachment personnel confirming their awareness of the contents of the manual, as introduced in evidence, commenced on the 20th day of October, 1988, almost three weeks after the events involving Mr. Robinson. The Commission finds that there was a failure on the part of the guard, Mr. Marshall and by the officers on duty on the morning of September 30, 1988 to comply with the provisions in the manual dealing with illness/medical aid and the care of intoxicated persons.

4.16 The Commission received in evidence by way of exhibit the RCMP Manual of Operations, chapter III.3 pertaining to Prisoners and Mentally Disturbed Persons. This manual sets out commendable provisions concerning the care to be taken and responsibility to be observed with respect to persons in custody with particular emphasis upon the wellbeing and protection of such persons, ensuring that immediate medical treatment is available as required, and encouraging a professional approach to the person in custody in order to reduce hostility and avoid violent incidents. Commendable as this statement of operational policy may be, the Commission finds that, in respect of the custody of Mr. Robinson, the officers on duty at the Gibsons Detachment on September 30, 1988 failed to take appropriate actions in compliance with the stated policy.

4.17 The Commission notes that, following the filing of the formal complaints by Mr. Robinson and Mrs. Farewell, an investigation was immediately launched. No attempt appears to have been made by the Commissioner to dispose of the complaints informally as contemplated in section 45.36 of the Royal Canadian Police Act. It is recognized that the consents which section 45.36 requires as a precondition to informal complaint disposition may impose significant barriers

to the use of the process; nonetheless the Commissioner should take every opportunity to achieve resolution in this way before the parties become involved in the complexities of the Part VII procedures.

4.18 From the evidence given by Sergeant Sanderson, the Commission concludes that the investigation of the complaints, including an assessment of criminal responsibility, focused on the activities and conduct of Corporal Waite. It may be that, as the senior member on duty on the morning of September 30, 1988, he must bear a special burden but in the proper investigation of these complaints, the Commission finds it inappropriate to exclude from examination the conduct of all officers associated with the events which gave rise to the complaint. In addition it is apparent that the evidence reported on by the investigator, the weight given to that evidence, the assumptions made and the conclusions reached reflect the internal nature of the investigation. The Commission finds that the investigation undertaken into these complaints pursuant to subsection 45.36(4) of the Royal Canadian Mounted Police Act lacks the thoroughness and objectivity which the external nature of the public complaints process requires.

5. RECOMMENDATIONS

It is not this Commission's purpose or function under Part VII of the Royal Canadian Mounted Police Act 1986 to determine criminal responsibility or assess civil liability in connection with incidents which give rise to complaints which come within the purview of the Commission. In addition, it must be noted that disciplinary matters fall outside of Part VII of the Act. The mandate of this Commission is to hear and enquire into the allegations contained in the complaint, make findings thereon and, when a complaint is well-founded, to make recommendations for the consideration of the Commissioner and the Solicitor General of Canada designed to provide an appropriate measure of satisfaction to the complainant and to avoid a repetition of the conduct which gave rise to the complaint.

Based on the Findings enumerated in this Report, the Commission makes the following recommendations:

5.1 The Commissioner take appropriate action to:

(a) acknowledge in writing to each of the complainants that their complaints were well-founded, thank them for bringing their concerns to his attention, and apologize on behalf of the RCMP for the conduct of the members and the personal distress and inconvenience which the incidents have caused. It would be helpful if the Commissioner would delegate a senior officer to deliver this acknowledgment to the complainants and discuss with them the actions which have been taken to prevent a recurrence of the events;

(b) reimburse each of the complainants for those reasonable expenses necessarily incurred in the presentation of the complaints and compliance with the procedures set out in the Act. In making this recommendation, the Commission wishes it to be clearly understood by all who become involved in the public complaints process that the burden of time, expense, anxiety, and personal sacrifice is not expected to be borne by the complainant.

5.2 The RCMP should ensure that each of its officers carrying out duties within British Columbia recognize the responsibilities imposed upon them when taking a person into custody under the authority of subsection 81(1) of the Offence Act of British Columbia. In particular, those officers must appreciate that they are subject to a statutory obligation to observe whether or not the person taken into custody is in need of remedial treatment by reason of the use of alcohol and, if so, that there is an obligation to take that person to a physician. With the increasing use of a variety of chemical substances in the general population, the significance of these responsibilities to the RCMP officer should be obvious. A complete and accurate record should be kept of the manner in which these responsibilities are fulfilled.

Of equal significance, the officer taking such person into custody should, at the earliest opportunity, determine whether or not there is an adult person who is willing and capable of taking charge of such person. If so, the adult person should be encouraged to do so rather than proceeding to place the intoxicated person in a cell. A record should be made of the efforts undertaken to find an adult willing and capable of accepting the responsibility for the care and custody of the intoxicated person.

5.3 When a person is taken into custody, whether by reason of intoxication or otherwise, the arresting officer must observe and record on the Prisoner Record the physical condition of the prisoner. The record itself is valuable, but even more valuable is the requirement on the part of the arresting officer to make the observation. Without this step being taken, the discharge of the duty of care becomes questionable.

5.4 Once a prisoner has been placed in a cell, frequent and accurate observations should be made of the activities and condition of the prisoner and a full record of such observations made by entry in the cell log or, if necessary, by supplemental report. If at any time it becomes necessary to remove a prisoner from the cell, such activity should only be carried out by two officers or by an officer and a guard. The time of removal should be entered in the cell log, and a separate report made of the reason for such removal and any activity or occurrence which takes place while the prisoner is outside the cell. This report should be signed by both persons involved in the process. A notation should be made in the cell log of the time of the return of the prisoner to the cell.

5.5 Special care is to be taken in circumstances where more than one prisoner is placed in the same cell. Careful observation is to be maintained to ensure that no activity occurs which affects the physical or mental wellbeing of a prisoner. If any such occurrence is observed, immediate action should be taken to separate the prisoners. It is appreciated that this will place burdens upon RCMP Detachments which have only one cell. In those Detachments, special standing rules should be established to take advantage of all appropriate available facilities and custodial techniques.

5.6 The officer in charge of each Detachment should ensure that each officer and civilian guard reads and understands the RCMP operational manual and any Detachment supplement which pertains to the care and handling of persons in custody. Regular instruction should be instituted to ensure that this requirement is met. In the course of providing this instruction, the officer in charge of the Detachment should obtain the assistance of qualified medical personnel who can instruct the officers and the civilian guards in the early recognition of signs and symptoms which, when exhibited by prisoners, indicate the need for medical assessment or assistance. Each officer or civilian guard should be aware of the consequences of a combination of alcohol or substance abuse with a physical injury and the symptoms to be looked for. Periodically, the officers and guards should be tested for their knowledge of and practical response to this aspect of custodial care.

5.7 Each Detachment should maintain a roster of the names and phone numbers of medical personnel available to serve the needs of the Detachment on a 24-hour basis.

5.8 When the cells are occupied by more than one prisoner, the civilian guard should not be left on duty alone. In such circumstances, a second guard or an RCMP officer should remain in attendance at the Detachment to assist in the event of any emergency.

5.9 Where an incident which may constitute an assault has taken place involving a person in custody, a file should be opened as with any other suspected offence, an officer assigned responsibility for that file and the investigation, and the matter reported immediately to the officer commanding the Detachment.

5.10 If it is alleged or suspected that an RCMP officer is implicated in the incident, the matter should be reported immediately to the officer in charge of the Detachment and to the Complaints & Internal Investigations Section of the RCMP. All officers on duty at the time of the incident should submit a full report of their knowledge of or involvement in the incident. Neither the officer alleged to be implicated nor any other officer in the Detachment should be assigned to the investigation.

5.11 When any RCMP officer receives notice of a complaint from any person which may fall within the scope of Part VII of the Act, the complaint, if written, or, if oral a memorandum thereof, should be sent immediately to the Complaints & Internal Investigations Section of the RCMP. An investigation into the complaint should be commenced without delay by persons who are not members of the Detachment where the incident giving rise to the complaint occurred. Special care should be taken by the investigating officers to avoid any conflict of interest or the appearance of conflict of interest which might affect the credibility of the investigation.

Appendix II

The relevant policy concerning care of prisoners is established at the national level at Headquarters. The national policy is supplemented at the Division and Detachment levels to take into account local circumstances.

The Gibsons Landing Detachment Unit Supplement to the Force's Operational Manual provides as follows:

- s.III.3.B.1. "If there is any indication that a person in your care or custody is sick or injured, immediately obtain medical aid." Other provisions in s.III.3.B. elaborate this obligation in terms of taking a prisoner to the nearest emergency facility if medical treatment cannot be obtained at the detachment; telling the doctor the circumstances and ensuring a medical examination of the prisoner; providing medication other than patent medicines only at the direction of a medical practitioner; and securing immediate medical treatment for people who appear intoxicated to the point of losing consciousness.

- s.III.3.F.2. requires that intoxicated persons "... be closely monitored to ensure that it is indeed alcohol and not some other cause, i.e. illness, that has put them into their state of apparent intoxication".

- s.III.3.K.3. "Medical examinations of prisoners for escort and/or illness is provided by the Gibson's Medical Clinic."

- s.III.3.K.5. "Persons who become ill in the cells after office hours may be taken to the St. Mary's Hospital emergency ward providing this meets with the approval of the doctor on call."

- s.III.3.L.1.A.i. requires members to be thoroughly familiar with the instructions in Chapters I and III of the Administration and Operational Manuals.

- s.III.3.L.1.A.ii. states that the Detachment cells are a holding facility only and that prisoners on remand are, through arrangements with the Sheriff's Office, to be transferred to other facilities. "Failing this, prisoners to be escorted to Sechelt Detachment by on-duty members on a 'need to' basis."

- s.III.3.L.1.C.x. requires members dealing with prisoners to maintain professional standards and forbids personal abuse, insults or indignity.

- s.III.3.L.1.C.xi. requires members on duty "to periodically check prisoners and record such checks in the Prisoner Record Book".

- s.III.3.L.2.i. requires guards to "Physically check all prisoners in custody on the commencement of his tour of duty".

- s.III.3.L.2.ii. Guards are required to "Physically check the prisoners from a safe distance every TWENTY MINUTES (20) or, more frequently as necessary."

- s.III.3.L.2.iii. Guards are required to "Record such checks in the Prisoner Record Book, indicating time checked (note any unusual conditions)."

- s.III.3.L.2.iv. Guards are required to "Notify the Shift Supervisor, immediately of any problems, i.e. sick prisoner ... Guards must pay particular attention to prisoners that are upset/unstable as a result of ... heavy alcohol consumption ..."

- s.III.3.L.2.v. Guards are required to "Remain constantly alert at all times."

The Force's Operational Manual provides as follows:

- s.III.3.C.13. "A prisoner who becomes ill, injured or is of questionable consciousness while in the care or custody of the RCMP shall be examined by a qualified medical practitioner."

- s.III.3.C.14. "A prisoner shall be monitored continually to ensure his/her security and well-being."

- s.III.3.C.16. "If serious injury or death occurs to a prisoner or person being arrested, detained or under RCMP control, an independent investigation shall be immediately conducted by a qualified senior investigator."

- s.III.3.E.1.a. "The RCMP is responsible for the well-being and protection of persons in its custody."

- s.III.3.E.1.b. "A person in the custody of the RCMP must not be subjected to personal abuse, insults, indignities or inadequate protection."

- s.III.3.E.1.c. "A person in the custody of the RCMP is entitled to receive necessary medical or psychiatric treatment."

- s.III.3.E.3.a. "If there is any indication that a person in your custody is sick, injured or intoxicated to the point of unconsciousness, ensure that he/she receives immediate medical treatment."

- s.III.3.E.3.b. "If you are unable to arrange for immediate medical treatment, take the person to the nearest emergency facility."

- s.III.3.E.3.c. requires that the medical practitioner attending be provided with all relevant information and be asked to conduct a complete physical examination.

- s.III.3.F.3.b.6. "Use the remarks portion of form C-13-2 to note any significant information on the prisoner's physical or mental condition, including any need for medication."

- s.III.3.G.1.a. "Each operational unit equipped to hold prisoners must publish manual supplements based on national policies governing guard duties." (As noted above the Gibsons Detachment has complied with this obligation.)

- s.III.3.G.1.c. "Unless the guard station is within the cell area, observation windows must be installed to permit the continual monitoring of prisoners by guards."

- s.III.3.G.1.c.1. "The use of CCTV monitoring systems in a cell area is to augment the guard function and is not a substitute for actual physical monitoring."

- s.III.3.G.2.f. Guards are required to "Monitor all prisoners continually."

- s.III.3.G.2.g. "Where it appears that a prisoner is ill/injured, or is complaining of illness/injury, or displaying irrational behaviour, record this information and inform the member in charge of the shift without delay.

    1. Closely monitor the prisoner until the member in charge is satisfied appropriate attention has been rendered."

"E" Division has also issued a supplement to the Operations Manual which provides as follows:

- s.III.3.E.5.a.1. "If there is any indication that a person in the care or custody of the RCMP is sick or injured immediately obtain medical aid. HQ Ops. Man. III.3.c.12 & 13 and III.3.E.3 refer.

- s.III.3.E.5.a.2. "A member who suspects that a person in custody may be sick or injured will make comments respecting that illness or injury in the 'remarks' portion of the Prisoner Record, Form C-13-1, and on the reverse side of the form if additional room is required."

- s.III.3.E.5.a.3. requires that the medical practitioner receive all relevant information.

- s.III.3.E.5.b. provides instruction on the handling of prisoners who are unconscious or of questionable consciousness and includes guidance on the recognition of medical problems with chronic alcoholics.

Finally, the Deputy Commissioner, Operations, issued to all Commanding Officers a memorandum dated December 16, 1989 outlining ten procedures with respect to the care and handling of prisoners, cell supervision training program for guards, alcohol/drug/mental health awareness programs and resource persons for counselling/interactions/comforting prisoners. This memorandum is, however, subsequent to the events in question but is reflective of the Force's ongoing concern with respect to the proper and humane care of prisoners.